



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

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Petitioners state an order granting additional powers under § 1853 was granted 6/22/79, which included the right to borrow money and give security for the repayment thereof. In 1980 a small equity loan was received to maintain the conservatee's real property, which loan was timely paid. In or around 2005, a second equity loan was taken against the Conservatee's residential real property in the amount of \$50,000 to pay for necessary repairs and essential improvements, allowing the Conservatee to remain in her home. Due to limited income, co-conservator Carol Inman was required to be a co-borrower. During the life of the Conservatee, the conservatee's income was sufficient to pay the monthly mortgage to Chase Bank; however, since February 2015, Ms. Inman has been making the monthly payments from her personal funds to avoid foreclosure. Said payments will continue until the real property is sold or the Court orders her to cease payments. Carol Inman requests reimbursement in the amount of \$5,271.64 for monthly mortgage payments from 2/1/15 through 12/1/15. (Note: Schedule G indicates that the current balance is \$30,114.70 with a 3.75% interest rate, payable monthly in the amount of \$479.24.

Petitioners state the Conservatee was receiving \$12/month from the Veterans Benefits Administration; however, upon her death, such benefits ceased. However, the Conservatee received an overpayment of such benefits during her lifetime and on 3/9/15, Linda Inman received a letter from the Dept. of Veterans Affairs Debt Management Center requesting repayment in the amount of \$4,612.00. See Attachment 3.

At the time of her death, the Conservatee was residing in her home and was receiving SSI as her means of support, which was automatically deposited to the conservatorship estate checking account. On 2/10/15, notice of her death was provided to California Dept. of Health Care Services and an estate recovery claim was filed against the estate in the amount of \$2,059.90. Notice has been forwarded to Bruce Bickel.

Petitioners pray for judgment of this Court that:

1. **Notice of Hearing of this account, report and petition be given as required by law;**
2. **The court make an order approving, allowing and settling the attached account and report of the co-conservators as filed;**
3. **The Court confirms Petitioner Carol Inman's right to reimbursement for post death and ongoing payments to Chase Bank upon the sale of the subject real property;**
4. **The Court authorize Bruce Bickel, Administrator of the Estate, to pay attorney fees in the amount of \$2,043.38 for legal services and expenses rendered to the conservatorship during the accounting period;**
5. **The Court authorize and direct Linda Inman and Carol Inman to deliver the property remaining in their possession to Bruce Bickel, Administrator of the Estate of Charlotte Inman, subject to a lien for any amounts of payments herein authorized that remain unpaid, and that on delivering the property and filing proper receipts, the co-conservators be discharged and the surety on their bond be discharged; and**
6. **The Court make such other relief as it considers proper.**

SEE ADDITIONAL PAGES

Page 3 – NEEDS/PROBLEMS/COMMENTS:

1. Accounting does not balance. Pursuant to Probate Code §1061(c): Total charges shall equal total credits. See Summary: Charges \$72,978.35 / Credits \$74,684.52). Amended account may be required. (Note: In attempting to reconcile the accounting, it appears that the ending cash on hand figure may be incorrect – specifically, how can the ending cash on hand at 12/7/15 exactly the same as the beginning cash on hand at the decedent's date of death, when the accounting indicates total receipts of \$6,366.64 and total disbursements of \$8,072.81? Amended accounting or schedules may be required. Note: Based on the receipts and disbursements, Examiner calculates that there the ending cash on hand should be \$5.54; however, this total should be provided and verified by the co-conservators and should correspond to the account statements that have not yet been provided per #2 below.
2. Need account statements pursuant to Probate Code §2620(c). (Note: Account statements should confirm the beginning and ending cash on hand as shown in the account.)
3. Probate Code §2620(b) requires the final account to include accounting for the period ending on the date of death and a separate accounting for the subsequent period. Petitioner states accountings were previously dispensed and provides this accounting for the subsequent period only. However, given the various transactions described that occurred during the prior period, the Court may require further information or accounting for the prior period.
4. Need clarification: Court records indicate Conservatee's daughter Barbara Inman predeceased her; however, it is not known whether she had issue that would be entitled to notice of this matter and the estate matter.
5. Petitioners states that only Diane Inman requested special notice; however, two additional requests for special notice were filed by Raymond Inman on 10/14/15 and by Allied Mutual Insurance Company on 3/31/94. Raymond Inman was given notice, but Allied Mutual Insurance Company was not. Therefore, need continuance for proper notice per Probate Code §1252.
6. Need continuance for notice to Office of Veterans Administration per Probate Code §1461.5.
7. Petitioner includes the conservatee's out of state real property as an asset on hand to be distributed to the personal representative of the estate; however, pursuant to Probate Code §1063(h), such property should be set forth on a separate schedule and state what action will be taken to preserve and protect it, including whether ancillary proceedings may be necessary, as this Court does not have jurisdiction to make distribution orders regarding such property.
8. Need revised proposed order given the above issues.

Petition for Instruction and for Order Approving the Payment of Extraordinary Attorneys Fees to Dowling Aaron Incorporated for Representation of the Estate in Litigation, and for Payment of Said Extraordinary Fees by the Kochergen Family Trust Dated September 28, 2007, as Amended and Its Sub-Trusts, without Court Approval

DOD: 6/20/15		MIKE J. KOCHERGEN and ANN J. SHUKEN , Co-Executors, are Petitioners.	NEEDS/PROBLEMS/COMMENTS:
		Petitioners state there are currently no known assets in the probate estate. The probate was filed to establish standing in certain ongoing litigation. Petitioners believe all of the decedent's assets are held in the Kochergen Family Trust dated 9/28/07 as amended, or its sub-trusts thereunder established after the death of Vera M. Kochergen on 10/10/07. The trust is also the sole beneficiary of the probate estate under the decedent's will.	Minute Order 2/2/16: Counsel requests time to address the Examiner's notes.
Cont. from 020216			
	Aff.Sub.Wit.		<u>SEE PAGE 2</u>
✓	Verified		
	Inventory		
	PTC		
	Not.Cred.		
✓	Notice of Hrg		
✓	Aff.Mail	w	
	Aff.Pub.		
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen		
✓	Letters	9/28/15	
	Duties/Supp		
	Objections		
	Video Receipt		
	CI Report		
	9202		
✓	Order		
	Aff. Posting		
	Status Rpt		
	UCCJEA		
	Citation		
	FTB Notice		
		At the time of the decedent's death, there was ongoing litigation under <u>Britz, Inc., et al. v. John A. Kochergen, et al.</u> , Fifth District Court of Appeals for the State of California, Case No. F068982, on appeal from Fresno Superior Court Case No. 13CECG02782 and 12CECG03966. The decedent is named individually and the litigation is still ongoing. Petitioners are represented by Dowling Aaron Incorporated in the litigation.	
		The estate has no assets, liquid or otherwise, to pay for the extraordinary attorney's fees and costs it will incur in the litigation. Mike J. Kochergen, the trustee of the trust, has agreed to pay the extraordinary attorney's fees and costs pertaining to the litigation and satisfy the current debt and assume liability for the payment of all extraordinary attorney's fees and costs pertaining to the litigation. See Assumption of Personal Liability filed concurrently.	
		Petitioners are in doubt as to the appropriate procedure in light of the foregoing facts and circumstances and request Court approve the hire of Dowling Aaron Incorporated by the estate to represent it in the litigation and approve the payment of extraordinary attorney's fees and costs pertaining to the litigation by the trust without Court approval. <u>SEE PAGE 2</u>	
			Reviewed by: skc
			Reviewed on: 2/25/16
			Updates:
			Recommendation:
			File 10- Kochergen

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Petitioners pray for an order as follows:

1. Instructing Petitioners to hire Dowling Aaron Incorporated to represent the estate in the litigation;
2. Approving the payment of extraordinary attorney's fees and costs to Dowling Aaron Incorporated pertaining to the litigation by the trust without the need for Court approval;
3. Providing any and all further instruction, or awarding such relief, as the Court may deem just and proper.

NEEDS/PROBLEMS/COMMENTS: Examiner notes previously noted:

1. The Court does not have jurisdiction within this estate to authorize payment from the trust. The trust is not currently before the Court. Petitioners may wish to consider whether opening a trust action under Probate Code § 17200 may be a more appropriate vehicle to obtain Court authorization for expenditures from the trust.
2. The Court, *within this estate*, can only authorize extraordinary compensation to be paid *from this estate*. Petitioners state that the estate *currently* has no assets as all of the decedent's assets were/are held in trust; however, Petitioners do not indicate whether the estate expects to recover or benefit from the litigation. Examiner notes that there have been numerous creditor's claims filed in the estate totaling in excess of \$500,000.00 (not including the claim filed by Britz, Inc., in an amount "TBD"). When considering petitions for extraordinary compensation, the Court must consider whether such compensation is just and reasonable (Probate Code § 10811), and to do so, requires the information set forth in Cal. Rules of Court 7.702, 7.703 re benefit to the estate, etc.

Status Report filed 2/23/16 states the purpose of filing the probate administration was to prosecute and defend the decedent's interest in certain litigation and to determine all creditor's claims against the estate. The sole heir is the decedent's trust which is subject to the creditor's claims under § 19001(a), which states upon the death of a settlor, the property of the deceased settlor that was subject to the power of revocation at the time of the settlor's death is subject to the claims of the creditors of the deceased settlor's estate and to the expenses of administration of the estate to the extent that the deceased settlor's estate is inadequate to satisfy those claims and expenses.